IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2317 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHITUBHAI KUNVARJI DESAI & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HM PRACHCHHAK for Petitioner(s) : 1 - 4.
MS. TANUJA KACHCHHI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/06/2007

ORAL JUDGMENT

1. Shri H.M. Prachchhak, learned counsel for the petitioners; Ms. Tanuja Kachchhi, learned AGP

for the State Government.

2. In view of the judgment of this Court in the case of *Moman Habib v. State of Gujarat, reported in 1970 GLR 307,* the parties agree that the ambit of Section 211 of the Bombay Land Revenue Code is very wide inasmuch as a decision can be called in question by the State Government, but the powers conferred on the revisional authority under Section 209 read with Section 211 of the Bombay Land Revenue Code do not confer any additional power on the revisional authority to take additional evidence. The parties also agree that no additional evidence, therefore, would be allowed or recorded under Section 211.

3. In the present matter, undisputedly, the learned Deputy Collector, while exercising revisional powers had recorded additional evidence and as argued by Shri Prachchhak, did not allow the petitioners to cross-examine the Canal Officer and also did not allow them to be represented by an advocate. Though Ms. Tanuja Kachchhi, learned AGP opposes the said contention, but in view of

the above judgment of the Division Bench, she submits that additional evidence has to be ignored and under the circumstances, the order passed by the Deputy Collector, confirmed by the Gujarat Revenue Tribunal deserves to be quashed and set aside. She however submits that though additional evidence cannot be looked into, the fact still would be that the matter was not properly conducted for and on behalf of the State Government and certain fabricated material was brought on the records. She submits that if this Court is to set aside the revisional order and the order passed by the Gujarat Revenue Tribunal, then too, the matter be sent back to the Mamlatdar cum ALT for a decision afresh after giving due opportunity to the parties to lead evidence with a further right to cross-examine the witnesses of the other side. Shri Prachchhak, learned counsel for the petitioners has no objection to it.

4. In view of the joint submissions made by the parties, the order dated 27.2.89 passed by the Deputy Collector in Ceiling Revision Case No.

133/88 and the order passed by the President, Gujarat Revenue Tribunal on 10th February, 1997 in Revision Application No. TEN B.S. No. 204/89 are hereby quashed and set aside. The matter is remanded back to the learned Mamlatdar cum ALT. The parties present in the Court shall appear before the Mamlatdar cum ALT on 25th July, 2007 and shall produce a copy of this order enabling the Mamlatdar cum ALT to know that what he is required to do. After the appearance of the parties, the learned Mamlatdar cum ALT shall grant appropriate opportunity to each of the party to lead oral evidence and produce documentary evidence on which they rely. Appropriate opportunity to cross-examine the witnesses of the other side shall be provided and if required and prayed, the Mamlatdar cum ALT shall allow the parties to be represented by a legal practitioner. After giving opportunity of hearing to the parties, the Mamlatdar shall decide the matter afresh after taking into consideration the entire material available on the records. The Mamlatdar shall dispose of the

matter finally within a period of six months from the date of appearance of the parties. The petition is allowed. Rule is made absolute accordingly. No costs.

5. Copy of this order be sent to the concerned Mamlatdar cum ALT from the Court side.

[R.S. GARG, J.]

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